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4 RICHARD JOHN,  
5 Plaintiff,  
6 v.  
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8 UNITED AIRLINES, INC., et al.,  
9 Defendants.

10 Case No. 15-cv-00475-VC  
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**ORDER DISMISSING CLAIMS WITH  
LEAVE TO AMEND**

Re: Dkt. No. 21

12 The court issued an order to show cause why the plaintiff's claims relating to unposted  
13 positions should not be dismissed for failure to state a claim. After receiving briefs on this  
14 question and holding a hearing, the court concludes that the complaint fails to state a claim for  
15 race discrimination with respect to the unposted positions. As the plaintiff concedes in his brief,  
16 to prevail on a claim that he was denied an unposted position because of his race, he must show  
17 that he "indicated to the employer" an interest in being promoted to a particular position, or to a  
18 class of positions that includes that particular position. Plaintiff's Response at 3 (quoting *Mauro v.*  
19 *S. New England Telecomm., Inc.*, 208 F.3d 384 (2d Cir. 2000)). *See also* Defendants' Response at  
20 5 ("Where the promotions are not posted, there must be, at minimum, some factual allegations that  
21 reflect an attempt to obtain an identifiable position, such as a clear expression of interest to the  
22 decisionmaker."). As explained in the order to show cause, and in the defendants' brief, and at the  
23 hearing, the complaint does not do this.

24 Accordingly, the complaint is dismissed. Although this is the Fifth Amended Complaint,  
25 given the unusual procedural background of this case, the plaintiff will be given one more  
26 opportunity to amend the complaint to sufficiently allege that the defendants discriminated against  
27 him personally. Any amended complaint must be filed by June 12, 2015. A case management  
28 conference will take place June 23, 2015 at 10:00 a.m.

1           **IT IS SO ORDERED.**

2           Dated: May 22, 2015

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4           VINCE CHHABRIA  
United States District Judge

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United States District Court  
Northern District of California